



THIRD JUDICIAL CIRCUIT
OF MICHIGAN

TIMOTHY M. KENNY
PRESIDING JUDGE
CRIMINAL DIVISION

FRANK MURPHY HALL OF JUSTICE
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July 30, 2010

Mr. Corbin R. Davis, Clerk
Michigan Supreme Court
P.O. Box 30052
Lansing, Michigan 48909

RE: ADM File No. 2009-19

Dear Mr. Davis:

I am writing to comment on the portion of ADM File No. 2009-19 that would impact a one year statute of limitation on the filing of motions for relief from judgment, **MCR 6.500 et seq.**

As a trial judge for almost fourteen years in Michigan's busiest criminal court, I have experienced firsthand the volume of seemingly endless motions for relief from judgment. Many of the motions require exhaustive court file and trial transcript searches by our understaffed clerk's office. Many of the motions for relief from judgment involve trial litigation that is at least ten years old. Achieving finality in criminal matters is certainly a welcomed goal for the court, the litigants and the public.

A recent case on my docket has given me concern about how proposed **MCR 6.502(H)** would permit appellate relief for defendants who were actually innocent.

In 2001, Dwayne Provience was convicted by jury of the second degree murder of Rene Hunter. Mr. Provience was sentenced to a 30-60 year term of imprisonment.

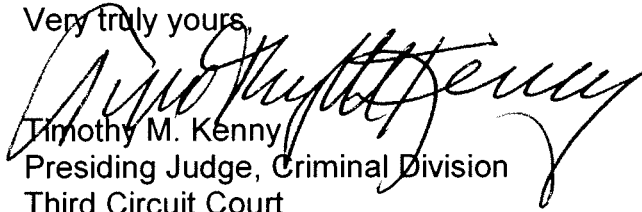
Eight years later, Mr. Provience's attorneys filed a motion for relief from judgment pursuant to **MCR 6.500**. The motion set forth ineffective assistance of trial and appellate counsel. There was a complete failure on the part of trial counsel (subsequently disbarred) to call seven witnesses who would have contradicted the testimony of the prosecution's only eyewitness. Appellate counsel never raised the issue of trial counsel's ineffectiveness.

As Mr. Provience's motion for relief from judgment was being investigated, his attorney discovered that the same Wayne County Prosecutor's Office argued a completely different theory regarding the murder of Rene Hunter in a 2003 murder prosecution of Eric Woods. An examination of discovery material in the Eric Woods homicide case revealed that the exculpatory material had not been provided to Mr. Provience in his 2001 murder case. The failure to provide material pursuant to **Brady v Maryland** resulted in a stipulated order for new trial for Mr. Provience. The case against Mr. Provience has since been dismissed. Mr. Provience spent nine years in prison for a crime he did not commit.

If the new proposal were in effect at the time of Mr. Provience's motion for relief from judgment, I believe I would have been forced to deny it.

I respectfully submit that any amendment to **MCR 6.500 et seq** should provide an avenue for innocent defendants to be heard.

Very truly yours,



Timothy M. Kenny
Presiding Judge, Criminal Division
Third Circuit Court

TMK/dh